

BUSINESS LAW SECTION

Franchise Law Committee

REPORT OF PENDING FRANCHISE LEGISLATION

FRANCHISE LAW COMMITTEE MEETING - APRIL 28, 2000

by Rochelle B. Spandorf, Esq.

SB 1819

Introduced on 2/24/00. Bill proposes to amend the Vehicle Code to ease up the prohibition against manufacturers and distributors licensed under the Vehicle Code owning a dealership located within a 10-mile radius of a franchisee-owned dealership selling the same line-make vehicles. Existing law forbids such ownership to ensure competition in the retail market of vehicles. The bill proposes some limited exceptions to this ban, for (1) temporary periods not to exceed one year (although a manufacturer can extend for good cause, (2) a bona fide dealer development program designed to enable persons lacking capital, training, business experience or other qualities to qualify for a dealership. The bill would also expand the list of activities constituting unfair competition by manufacturers and distributors, presumably as a trade-off for easing up on the ownership restrictions. The unfair competition provisions aim to prevent a manufacturer/distributor that owns a dealership from favoring its own dealership (in terms of allocation and other considerations) over a franchisee-owned dealership.

SB 123

This legislation, introduced by Senator Peace in December 1998, would amend the Business & Professions Code sections dealing with petroleum refiners, distributors and manufacturers to forbid them from preventing a branded gasoline franchisee from purchasing branded petroleum through any wholesale vendor in the franchisor's network. It would also prohibit price discrimination between different franchisee purchasers. Nothing appears happening with this bill. The last action indicated was on May 18, 1999. However, the bill is still alive in the current 1999-2000 session according to my report.

AB 1360

This bill, introduced by Assemblyman Kaloogian in February, 1999, to amend a number of different provisions of the SAMP Act, including definitional provisions, died in committee in February, 2000.

AB 2699

This bill, introduced by Assemblyman Cox on February 25, 2000, would amend the SAMP Act to exclude from the scope of the SAMP Act, "product distributorships." The definition of "product distributorships" is multi-prong (summarizing): (A) purchaser sells the goods at wholesale; (B) purchaser does not pay the seller a fee for the right to enter into the agreement and purchaser is not required to buy a minimum or specific quantity of goods; (C) seller is a business entity; (D) seller has a net worth of at least \$10M based on audit within last 18 months (net worth must be verified by an independent CPA if requested by the Attorney General); (E) seller grants purchaser a license to use a trademark registered under federal law; and (F) purchaser is not required or encouraged to recruit others to participate in the program. Last amendment was on April 25, 2000 when words "multilevel distribution program" was dropped from the text, but the

amendment made no substantive change to the overall definition.

AB 2699 would add a very narrow exemption to the SAMP Act. AB 2699's real significance, it seems to me, is the implication that distribution programs that do not qualify as a "product distributorship" under this definition, and are not a franchise because of the absence of a franchise fee, may be subject to the SAMP Act. However, in order for this to happen, the seller of a distribution program that does not qualify as a "product distributorship" would presumably still have to make one of the statutory triggering representations (i.e., as to potential earnings, the existence of a market for the goods, or promise to buy back produced goods).

Franchise Law Committee